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Re: Dr Abbas v GMC [2017] EWHC 51 (Admin)

Abstract

This is an appeal under s.40 of the Medical Act against the decision of the MPT dated 9 June 2016 to erase Dr Abbas' name from the register with an order for immediate suspension.

Background

Dr Abbas worked as a locum specialist registrar in general medicine for the Peterborough and Stamford NHS Foundation Trust (the Trust) between 2 September 2013 and 17 January 2014. It was alleged that on 20 November 2013 Dr Abbas refused to treat Patient B on the grounds that B was not his patient; that he refused to give his name to B's son, and that he covered up his name badge to prevent B's son from identifying him. It was further alleged that on the same day he told a Deputy Sister that it was not his legal responsibility to respond to patients that were not his unless he had actually interacted with or touched them.

The referral to the GMC included two further allegations. Firstly, that his attitude towards, and communications with, colleagues and Patient E was inappropriate and disrespectful; and secondly, concerns regarding Dr Abbas' clinical care of Patient F.

In the course of the GMC's investigation into the concerns, Dr Abbas failed to return his Employer Details Form (EDF). This formed a further allegation.

The GMC brought a further allegation that when giving evidence to an Interim Order Panel of the GMC on 15 July 2014, Dr Abbas dishonestly stated that he was registered with only one locum agency. At that IOP hearing, Interim Conditions were imposed on his registration. The GMC brought a further allegation that Dr Abbas dishonestly breached condition 6 of the IOP by accepting a post at University Hospitals Coventry and Warwickshire (UCHW) without obtaining the approval of the GMC, breached condition 1 by not providing the contact details of UCHW and breached condition 8 by failing to inform UCHW of the IOP conditions.

The GMC brought a further allegation that in a witness statement dated 15 July 2014, Dr Abbas dishonestly accused a nurse of referring matters concerning Patient F and other patients to the GMC in retaliation for a previous incident 'and to hide her own incapacity'. A final allegation was made that in his response to the GMC allegation concerning Patient F, Dr Abbas made incorrect medical statements about the contents of F's medical notes, F's medical condition and indications for ventilation.

At the substantive Fitness to Practise hearing Dr Abbas represented himself. The tribunal found the above facts proved, including dishonesty in relation to the oral evidence he gave to the IOP on 15 July 2014 and the breach of IOP conditions 1, 6 and 8.

The tribunal found that Dr Abbas' misconduct had put patients at risk of harm and brought the profession into disrepute. He had presented no evidence of remediation and had no insight into his shortcomings. He had breached fundamental tenets of the profession. His integrity could not be relied upon [para 26]. Dr Abbas was erased from the medical register.

Appeal

The matter was heard by Nicol J who dismissed the appeal. Dr Abbas again represented himself. Nicol J dealt with and dismissed in turn each of the grounds of appeal and held in each case that the tribunal had not been wrong:

1. The tribunal was not wrong to refuse Dr Abbas' request for an adjournment so that he could seek legal representation. Dr Abbas was on state benefits and so would only be able to obtain *pro bono* representation, but had provided no evidence of any efforts to obtain representation. The allegations were serious and there was a public interest in dealing with them expeditiously [para 34].
2. The tribunal was entitled to reject his application to adjourn on the separate ground that vital papers were missing. The GMC had confirmed

that it had disclosed all papers in its possession, and the Trust had confirmed that it had disclosed all papers in its possession. No purpose would be served by an adjournment. It was for the GMC to prove its case on the available evidence, which it had done [para 35].

3. The tribunal was plainly entitled to reject the separate application Dr Abbas made at the conclusion of the GMC case to adjourn proceedings in order to allow him to instruct an expert. The GMC expert's report had been served 18 months before the hearing. Dr Abbas accepted that he was unlikely to obtain an expert's report in the 6-8 weeks for which he sought an adjournment [para 36].
4. The tribunal did not treat Dr Abbas unfairly in relation to his cross-examination of the GMC expert. Before releasing him, the chair of the tribunal established that that Dr Abbas had no further questions. There was no evidence that Dr Abbas' cross-examination was cut short. From time to time during the cross examination, the chair intervened to clarify the nature of the question. Dr Abbas did not submit that any particular intervention was inappropriate or unfair. In conclusion, Dr Abbas did have a fair opportunity to cross examine the GMC expert [para 38].
5. Dr Abbas' allegation that the GMC expert was biased against him was entirely unsubstantiated. The expert made concessions. He owed the usual professional obligations to the tribunal and signed a declaration to that effect in his report. Overall, the tribunal found him to be 'patient, fair and credible' [para 39].
6. It was true that the GMC did not call evidence from doctors and relied on the evidence of some of the nurses, however this fact took Dr Abbas nowhere. The evidence was sufficient to allow the tribunal to find most of the facts proved, and Dr Abbas could himself have called the doctors if he thought it would have assisted his case. Nicol, J referred to the powers to compel the attendance of a witness [para 40].
7. The tribunal was not unfair to reject Dr Abbas' claim that he had written on the medical notes but that his entries were obscured by labels. The tribunal rejected this evidence. Held: "*this was the kind of judgment which it was open to this specialist tribunal to reach*" [para 42].
8. The tribunal was not wrong to allow some witnesses to give evidence by videolink and gave clear and careful reasons for doing so [para 43].
9. The tribunal did not fail to take sufficient notice of the threats which the son of Patient B made to Dr Abbas; both the son of Patient B and Dr Abbas gave evidence, and the tribunal rejected Dr Abbas' evidence. They were entitled to do so [para 44].

10. The tribunal was entitled to find that Dr Abbas breached the IOT conditions and held that "*those findings are unassailable*" [para 46].

The tribunal found that there had been persistent dishonesty over a considerable period. This included dishonesty to the IOT, and dishonestly breaching IOT conditions. There was a lack of insight. Held: "*Putting the matter at its lowest, I could not possibly say that erasure was not a sanction open to the tribunal*" [para 49].

Salient points

1. Where there is persistent dishonesty over a considerable period, including dishonesty to the IOT, and dishonestly breaching IOT conditions, it would be surprising if the tribunal concluded that a lesser sanction than erasure was appropriate.

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